MOTION FILED
JUL 31 1998

No. 98-97

In The

Supreme Court of the United States

October Term, 1997

ELOISE ANDERSON, Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; PETE WILSON, Governor of the State of California; and CRAIG L. BROWN, Director, California Department of Finance,

Petitioners,

v.

BRENDA ROE and ANNA DOE, on behalf of themselves, and all others similarly situated,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

MOTION FOR LEAVE OF COURT TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE UNITED STATES JUSTICE FOUNDATION AND CALIFORNIA STATE SENATORS RAY HAYNES, ROB HURTT, TIM LESLIE, AND RICHARD RAINEY; AND CALIFORNIA STATE ASSEMBLY MEMBERS STEVE BALDWIN, HOWARD KALOOGIAN, BILL LEONARD, TOM McCLINTOCK, AND BERNIE RICHTER, IN SUPPORT OF PETITIONERS

JAMES V. LACY
Counsel of Record
LACY AND LACY
30100 Town Center Dr., No. O-269
Laguna Niguel, CA 92677
(714) 248-1154

Counsel for Amici Curiae

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

MOTION OF THE UNITED STATES JUSTICE FOUNDATION AND CALIFORNIA STATE SENATORS RAY HAYNES, ROB HURTT, TIM LESLIE, AND RICHARD RAINEY; AND CALIFORNIA STATE ASSEMBLY MEMBERS STEVE BALDWIN, HOWARD KALOOGIAN, BILL LEONARD, TOM McCLINTOCK, AND BERNIE RICHTER, FOR LEAVE OF COURT TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

I. INTERESTS OF THE *AMICI CURIAE*[1]

The United States Justice Foundation and California Legislators (the "USJF") ("*Amici*") moves pursuant to Rule 37 of the Rules of this Court for leave to file the accompanying brief as *amici curiae* in support of Petitioners. USJF sought written consent to file this brief *amici curiae* from Petitioners and Respondents. Petitioners provided written consent, which has been lodged with the Clerk of the Court. Respondents, through their Counsel, American Civil Liberties Union Foundation of Southern California, refused to give consent to filing this brief *amici curiae*.

USJF is a nonprofit corporation organized under the laws of the state of California and dedicated to the promotion of constitutional rights. Since its inception in 1979, USJF has regularly assisted individuals and classes, not only to redress individual acts of injustice, but also to promote important public policy matters affecting constitutional claims. For example, among others, USJF has

---

[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than *amici curiae*, its members, or its counsel, made a monetary contribution to the preparation and submission of this brief. (Supreme Court Rule 37.6).

filed briefs *amicus curiae* in the United States Supreme Court in support of the constitutionality of California's Proposition 13 and an Arkansas state Congressional term limits law; in the California Supreme Court in opposition to claims that the state Unruh Act requires atheists to be admitted to the Boy Scouts; and in the Ninth Circuit Court of Appeals in support of the California welfare reform law at issue in this case. In addition, all three members of the Board of Directors of USJF are California residents and taxpayers, and share an interest on behalf of USJF in the stability and reform of the California welfare system.

Amici also include several members of the California Legislature who are interested in the implementation of the state welfare reform law which is at issue in this case.

USJF's active involvement in issues regarding California state government tax and spending policy enable them to provide this Court with an important perspective. In its brief, USJF addresses the challenge to Welfare and Institutions Code section 11450.03 and specifically discusses the importance of this Court resolving the issue of whether it is appropriate for lower courts to seize upon the so-called constitutional "right to travel" in welfare benefit cases to establish through the "back door" a constitutional right to welfare benefits at a particular level. USJF urges the Court to grant Petitioner's Writ of Certiorari to resolve the constitutionality of state welfare reform programs such as the one advanced by the State of California.

For the foregoing reasons, USJF respectfully requests leave of court to file this brief as *amici curiae* in support of Petitioners.

Respectfully submitted,

James V. Lacy
Lacy and Lacy
30100 Town Center Dr., #O-269
Laguna Niguel, CA 92677
(714) 248-1154

Counsel for Amici Curiae

Dated: July 31, 1998

TABLE OF CONTENTS

Page

MOTION FOR LEAVE OF COURT TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS ... 1

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

BRIEF *AMICI CURIAE* IN SUPPORT OF PETITIONERS 1

INTERESTS OF THE *AMICI CURIAE* 1

STATEMENT OF FACTS 2

SUMMARY OF ARGUMENT 2

ARGUMENT .....

I. DO TIERED WELFARE BENEFITS AND DURATIONAL RESIDENCY REQUIREMENTS IMPLICATE "FUNDAMENTAL RIGHTS?" 4

A. BACKGROUND 4

B. THE PLAINTIFFS DO NOT HAVE A FUNDAMENTAL RIGHT TO WELFARE PAYMENTS 4

C. THE PLAINTIFFS ARE ATTEMPTING TO "BOOT-STRAP" A FUNDAMENTAL RIGHT TO WELFARE BY CLAIMING THEIR "RIGHT TO TRAVEL" HAS BEEN INFRINGED 5

D. THIS COURT APPEARS UNCERTAIN ON WHEN DURATIONAL RESIDENCY REQUIREMENTS IMPLICATE A "FUNDAMENTAL RIGHT." 6

TABLE OF CONTENTS – Continued

Page

E. LOWER COURTS ARE DIVIDED ON WHETHER DURATIONAL RESIDENCY REQUIREMENTS ESTABLISHING TIERED WELFARE BENEFIT LEVELS IMPLICATE A "FUNDAMENTAL RIGHT." 8

II. IF RATIONAL BASIS IS THE APPROPRIATE TEST, WHICH ANALYSIS SHOULD THE COURTS APPLY IN WELFARE CASES? 12

A. DISPARITIES ARE CONSTITUTIONAL WHERE THERE IS A PLAUSIBLE REASON FOR THE CLASSIFICATION 12

B. THE STANDARD SHOULD BE DEFERENTIAL 13

C. COURTS ARE DIVIDED IN THEIR ANALYSIS USING THE RATIONAL BASIS TEST 14

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986) 8, 9

Baker v. City of Concord, 916 F.2d 744 (1st Cir. 1990) 12

Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970), rehearing denied 398 U.S. 914, 90 S.Ct. 1684, 26 L.Ed.2d 80 (1970) 4, 12, 13

Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972) 6, 7

Green v. Anderson, 26 F.3d 95 (9th Cir., Cal. 1994) 5

Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985) 8

Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 108 S.Ct. 2481, 101 L.Ed.2d 399 (1988) 15

Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973) 13, 14

Maldonado v. Houstoun, 177 F.R.D. 311 (USDC, E.D. Penn. 1997) 8, 9, 10, 14

Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974) 5, 11, 12

Nordlinger v. Hahn, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992) 3, 14, 15

Panhandle Eastern Pipeline Co. v. Madison County Drainage Board, 898 F.Supp. 1302 (1997) 6

Roe v. Anderson, 134 F.3d 1400 (9th Cir., Cal. 1997) 2, 5, 11

Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322 (1969) 5, 6, 7, 8, 9, 10

TABLE OF AUTHORITIES – Continued

Page

Sosna v. Iowa, 419 U.S. 393 (1975) 4, 7, 8

United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 101 S.Ct. 453, 66 L.Ed.2d 368 (1980) 15

Warrick v. Snider, 1997 WL 875695 (USDC, W.D.Pa.) 10, 14

Westenfelder v. Ferguson, 998 F.Supp. 146 (USDC, D. Rhode Island, 1998) 11

Williams v. Vermont, 472 U.S. 14, 105 S.Ct. 2465, 86 L.Ed.2d 11 (1985)..... 13

Zobel v. Williams, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982).....8, 14

CONSTITUTIONAL PROVISIONS

Calif. Const. Art. IV, § 12(a) 14

STATUTES

Calif. Welfare and Institutions Code § 11450(a).. *passim*

BRIEF *AMICI CURIAE* OF THE UNITED STATES JUSTICE FOUNDATION AND CALIFORNIA STATE SENATORS RAY HAYNES, ROB HURTT, TIM LESLIE, AND RICHARD RAINEY; AND CALIFORNIA STATE ASSEMBLY MEMBERS STEVE BALDWIN, HOWARD KALOOGIAN, BILL LEONARD, TOM McCLINTOCK, AND BERNIE RICHTER, IN SUPPORT OF PETITIONERS

INTERESTS OF *AMICI CURIAE*

The USJF is a nonprofit corporation organized under the laws of the state of California and dedicated to the preservation of property, civil and human rights. USJF regularly assists individuals and classes, not only to redress individual acts of injustice, but also to promote important public policy matters. USJF has been active in a variety of issues since it was founded in 1979, including significant developments in the law in the fields of tax limitation and welfare reform. In addition, all three members of the Board of Directors of USJF are California residents and taxpayers, and share an interest on behalf of USJF in the stability and reform of the California welfare system.

Amici also include several members of the California Legislature who are interested in the implementation of the state welfare reform law which is at issue in this case.

USJF's active involvement in issues regarding California state government tax and spending policy enable them to provide this Court with an important perspective.

SUMMARY OF FACTS AND CASE

Amici incorporate by reference and refer the Court to the Statement of Facts as outlined in the Petition for Writ of Certiorari filed by the State of California in this matter.

SUMMARY OF ARGUMENT

Amici argue that the right the Plaintiffs seek to enforce in *Roe v. Anderson*, 134 F.3d 1400 (9th Cir., Cal. 1997) is not really a constitutional right of freedom to travel or migrate. Plaintiffs, in fact, seek to enforce a constitutional right to welfare payments at a benefit level chosen by the District Court, rather than the California Legislature. Welfare payments are not a fundamental right guaranteed by the U.S. Constitution. Similarly, and contrary to the decision of the Court of Appeals in this case, the particular benefit level of welfare assistance is not a fundamental constitutional right calling for strict scrutiny by this Court.

Decisions of this Court have left a confusing jurisprudence on the constitutional right to travel. District Courts are divided on the question of whether tiered welfare benefit levels established by state governments utilizing durational residency requirements implicate a fundamental right calling for strict scrutiny. The Writ should be granted to resolve the question of whether state durational residency requirements for welfare benefit levels implicate a fundamental right.

Amici also argue that in this case California must show only a rational basis for classification of welfare

benefit levels in order to satisfy the appropriate standard of review. However, in conducting a rational basis analysis on a tiered welfare benefit level similar to California's, a District Court in Pennsylvania is in conflict with this Court's decision in *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992), where a state classification resulting in multiple outcomes for calculation of property tax was found to satisfy the rational basis test. The Writ should be granted to allow this Court to articulate the appropriate rational basis analysis to be afforded to state durational residency requirements which result in tiered welfare benefit levels.

Further, the decision of the Ninth Circuit to affirm the District Court leaves California with no option but to break the law. If the decision stands, California's constitutional provision mandating a balanced budget is meaningless, and legitimate efforts by the executive and legislative branches of the State to establish priorities and a policy to control welfare spending will be rejected in favor of a different policy set by the judicial branch. USJF argues that welfare reform and the methods to achieve it have become so controversial that the Writ should be granted in this case, to resolve with finality the applicable standards, constitutional rights involved, and policy setting mechanisms available to State governments to control welfare spending.

ARGUMENT

I. DO TIERED WELFARE BENEFITS AND DURATIONAL RESIDENCY REQUIREMENTS IMPLICATE "FUNDAMENTAL RIGHTS?"

A. BACKGROUND

The statute at issue provides, generally, that families who have not resided in the state for 12 months will be eligible for welfare payments *at the level the family would receive in the state of prior residence*. Plaintiffs, who are eligible for these welfare payments, are not "irretrievably foreclosed" from obtaining these benefits. (*See Sosna v. Iowa*, 419 U.S. 393 (1975)). On moving to California, the Plaintiffs in the current case are immediately eligible for a particular level of benefits. After one year of residency in California, if welfare benefits are still necessary, Plaintiffs remain eligible for benefits, but at a different benefit level. In the case of these Plaintiffs, after one year of residence they would be eligible for higher welfare payments.

B. THE PLAINTIFFS DO NOT HAVE A FUNDAMENTAL RIGHT TO WELFARE PAYMENTS

There is no constitutional right to public welfare assistance, and therefore a constitutional challenge to classifications created by a state's welfare statute, standing alone, is subject to rational basis review. *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1160-61, 25 L.Ed.2d 491 (1970), rehearing denied 398 U.S. 914, 90 S.Ct. 1684, 26 L.Ed.2d 80 (1970).

C. THE PLAINTIFFS ARE ATTEMPTING TO "BOOT-STRAP" A FUNDAMENTAL RIGHT TO WELFARE BY CLAIMING THEIR "RIGHT TO TRAVEL" HAS BEEN INFRINGED

In a line of cases beginning with *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322 (1969), this Court has considered whether state durational residency requirements, including durational requirements for welfare payments, implicated the right to travel and interstate migration. Where state benefits were at issue, this Court has required the application of the compelling state interest test, rather than the rational basis test. *See Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). (Other citations omitted).

In ruling California's durational residency benefit level law unconstitutional, the Court of Appeals and the District Court below have both adopted this Court's "right to travel" reasoning as first articulated in *Shapiro*, and have subjected the California statute to strict scrutiny analysis. *See Roe v. Anderson*, 134 F.3d 1400 (9th Cir., CA, 1997), relying on its decision in *Green v. Anderson*, 26 F.3d 95 (9th Cir., CA, 1994).

However, *Amici* argue that the result of the Court of Appeal's decision is not the protection of a constitutional right to travel. What the Plaintiffs really want is more welfare. Nevertheless, the effect of the Court of Appeal's decision is the establishment, through the "back door", of a fundamental constitutional right to welfare for Plaintiffs and their class of recipients. Confusion exists, as outlined further herein, over the appropriate standard of review in such an equal protection case. The use of strict

scrutiny by courts in such cases, where a fundamental right is alleged to be infringed, has caused a District Court to respond to one such claim that:

> "Although the general formulations by courts under the equal protection clause invite such a bootstrap argument, it is not necessary and adds nothing to the claim under the clause in the Constitution that provides the underlying "fundamental" right that is the predicate of the equal protection claim."

Panhandle Eastern Pipeline Co. v. Madison County Drainage Board, 898 F.Supp. 1302 at 1314 (1997).

Amici urge the Court to grant the Writ to resolve the question of the appropriate standard of review in these equal protection cases.

D. THIS COURT APPEARS UNCERTAIN ON WHEN DURATIONAL RESIDENCY REQUIREMENTS IMPLICATE A "FUNDAMENTAL RIGHT."

While the Court of Appeals and the District Court in the instant case have adopted the "back door" fundamental right to welfare articulated in *Shapiro*, using its "right to travel" reasoning, other decisions, including those of this Court, have created a confusing "right to travel" jurisprudence, for which the Writ should be granted.

For example, in *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), this Court, relying on *Shapiro*, invalidated a durational residency provision requiring one-year's residence before a new resident could vote. The Court broadened *Shapiro* by rejecting any

notion that the case was limited to those where there was either an intent to deter migration or actual deterrence. However, in *Dunn*, this Court also attempted to limit the reach of *Shapiro*, explaining that a durational residency requirement would not penalize one's right to travel where the statute was not applied to that person *solely* based on that person's recent arrival in that state. *Id.* at 342 & n. 12, 92 S.Ct. at 1003 & n. 12. (Emphasis added.) In the instant case, California established that one of the reasons – if not the primary reason – the statute was applied to Plaintiffs was for purposes of economy, and not solely because they were recent arrivals. The state cited to exhaustive Federal and state administrative and legislative records supporting the need for welfare reform for budgetary purposes. (Citations omitted.) Under this Court's reasoning in *Dunn*, a District Court could have upheld the California statute, as it was not applied to Plaintiffs *solely* based on their recent arrival in the state. The Writ should be granted to provide guidance to the lower courts on whether the law of *Dunn v. Blumstein* remains applicable.

In *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975) the Court again retreated from *Shapiro*, noting that the state's interests in regulating domestic relations and protecting its divorce decrees from collateral attack was materially greater than the budgetary interests advanced in prior cases. Significantly, the Court found that the delay in divorce did not "irretrievably foreclose" persons from eventually obtaining a divorce. (*Id.*) (Citation omitted). Under this Court's reasoning in *Sosna*, a District Court could have upheld the California statute, as it does not "irretrievably foreclose" the Plaintiffs from

receiving their welfare assistance – as they are eligible for a level of assistance immediately, and another level after one year. The Writ should be granted to provide guidance to the lower courts on whether the law of *Sosna* remains applicable.

In *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982) and *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985), this Court appears to have applied an enhanced rational basis test, rather than strict scrutiny, in cases involving state statutes claimed to have violated Plaintiffs' right to travel. Subsequently, however, in *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903, 106 S.Ct. 2317, 2321, 90 L.Ed.2d 899 (1986), this Court, in a plurality opinion, resurrected *Shapiro's* "penalty" analysis to invoke strict scrutiny to strike down the state's veterans preference program favoring longer-term residents. The Writ should be granted to provide this Court the opportunity to clarify the appropriate test to be applied in the instant case.

E. LOWER COURTS ARE DIVIDED ON WHETHER DURATIONAL RESIDENCY REQUIREMENTS ESTABLISHING TIERED WELFARE BENEFIT LEVELS IMPLICATE A "FUNDAMENTAL RIGHT."

While it may be said that this Court's decisions involving right to travel cases are somewhat confusing, it is even clearer that District Courts are in actual disagreement on the matter. In *Maldonado v. Houstoun*, 177 F.R.D. 311 (USDC, E.D. Penn. 1997), a case involving a Pennsylvania statute "strikingly similar" to California's (177

F.R.D. at 317), the District Court, after considering the purposes the Pennsylvania law was enacted for, concluded that the Plaintiffs could not establish that the "primary objective" behind the ("strikingly similar") law was to deter migration. 177 F.R.D. at 330. Relying on *Shapiro* and *Soto-Lopez*, the Court stated:

> "While the Court recognizes that one of the purposes behind Section 9(5)(ii) was to discourage an influx of poor migrants into Pennsylvania, the Court simply cannot find that this was Pennsylvania's primary objective in enacting Section 9(5)(ii). Thus, strict scrutiny will not be applied based on the "primary objective" of the statute."

Id. The District Court felt the state had provided ample legislative history to support a conclusion that the primary purpose of the statute was to promote the "financial stability of Pennsylvania's welfare system," and thus required only application of a rational basis test, even though the state "candidly" admitted that a purpose of the law was to prevent the state from becoming a "welfare magnet." 177 F.R.D. at 328.

The *Maldonado* District Court's decision stands in stark contrast to the decisions of the District Court and the Court of Appeals below, which in issuing and upholding the preliminary injunction gave no consideration to the State of California's ample evidence supporting the primary purpose of the law, which is to bring financial stability to state expenditures on welfare. Once the lower courts in the instant case determined that the Plaintiffs were "penalized" by the law, they essentially

rejected consideration of any legitimate purpose offered in support of the law by the state.

Further, the *Maldonado* District Court determined that the "strikingly similar" Pennsylvania statute did not operate to penalize the Plaintiffs in that case from migration. Citing this Court's conclusion that although any durational residency requirement impinges to some extent on the right to travel, the District Court in *Maldonado* interpreted *Shapiro* as stating that such a requirement was not per se unconstitutional. This Court's holding in *Shapiro* was conditioned, 394 U.S. at 638 n. 21, 89 S.Ct. at 1333 n. 21, by the caveat that some "waiting period or residence requirements . . . may not be penalties upon the exercise of the constitutional right to interstate travel." The amount of impact required to give rise to strict scrutiny was not made clear by this Court.

Thus, what is viewed as a penalty under *Shapiro* analysis by a District Court in California is not viewed as a penalty under the same analysis in a "strikingly similar" case by a District Court in Pennsylvania. In order to provide guidance to the lower courts on the appropriate analysis, the Writ should be granted.

In *Warrick v. Snider*, 1997 WL 875695 (USDC, W.D.Pa.), another District Court in Pennsylvania, this time in the Western District, agreed with the *Maldonado* reasoning that strict scrutiny was the inappropriate standard of review in a challenge to a durational residency requirement for temporary welfare assistance where the Plaintiff made a claim of infringement of the right to travel. "I agree with Judge Newcomer. . . . Accordingly, strict scrutiny will not be applied on this basis." 1997 WL

875695, 5. Such a result is inapposite to the holding in the Court of Appeals, below.

Adding to the confusion, another District Court in Rhode Island has reached essentially the same conclusion as the Court of Appeals in *Roe v. Anderson*, finding that a durational residency requirement in a dual-tier benefit system in fact penalized the fundamental right to travel and justified application of a strict scrutiny standard. *Westenfelder v. Ferguson*, 998 F.Supp. 146 (USDC, D. Rhode Island, 1998).

Taken as a whole, the lower courts are turning out confusing and often contrary decisions in cases involving the standard of review in cases regarding durational residency requirements for welfare benefits. In cases which turn on "strikingly similar" facts, lower courts can't seem to agree on what really constitutes a penalty on travel. This is because such a determination has become so subjective under the current case law. As Chief Justice Rehnquist wrote in *Memorial Hospital v. Maricopa County*,

> "Since the Court concludes that 'some waiting period[s] may not be penalties,' one would expect to learn [how] to distinguish a waiting period which is a penalty from one which is not. *Any expense imposed on citizens crossing state lines but not on those staying put could theoretically be deemed a penalty on travel . . .* "
>
> "It seems to me that the line to be derived from our prior cases is that *some financial impositions on interstate travelers* have such indirect or inconsequential impact on travel that they *simply do*

not constitute the type of direct purposeful barriers struck down in Edwards and Shapiro."

415 U.S. 250 at 284. (Emphasis added.)

A consistent jurisprudence is necessary in these cases, and for that reason, *Amici* urge the Writ be granted.

II. IF RATIONAL BASIS IS THE APPROPRIATE TEST, WHICH ANALYSIS SHOULD THE COURTS APPLY IN WELFARE CASES?

A. DISPARITIES ARE CONSTITUTIONAL WHERE THERE IS A PLAUSIBLE REASON FOR THE CLASSIFICATION

Disparities are constitutional where a plausible reason exists. Social welfare or public assistance legislation runs afoul of the equal protection clause only if it cannot be said to relate rationally to a legitimate state objective. *Baker v. City of Concord*, 916 F.2d 744, 747, 748 (1st Cir. 1990).

This Court has upheld the implementation of a program which imposed a "grant limit" regardless of the size of the family or the standard of need. *See Dandridge v. Williams*, 397 U.S. 471 (1970). In *Dandridge*, Justice Stewart, in writing for the majority stated, "[H]ere we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the 14th Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families." *Dandridge v. Williams*, 397 U.S. 471 at 484.

Dandridge thus articulates a point at issue in the current case: whether a disparity in payments must implicate a constitutional right. In *Dandridge*, the Supreme Court found that such disparities were constitutionally permissible under equal protection analysis. The District Court in the instant case instead chose to focus on the alleged state interference with the freedom of interstate travel. *Amici* argue that what is at issue, however, is the state economic regulation and not any constitutional right.

B. THE STANDARD SHOULD BE DEFERENTIAL

In applying the Equal Protection Clause, the role of the courts in reviewing legislation is generally a deferential one; courts do not second-guess the wisdom or efficiency of state action, but merely seek to insure its rationality. *Dandridge v. Williams*, 397 U.S. 471, 485-86, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). Similarly, the Supreme Court has stated that "[I]n structuring internal taxation schemes, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Williams v. Vermont*, 472 U.S. 14, 22, 105 S.Ct. 2465, 2471, 86 L.Ed.2d 11 (1985), quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351 (1973).

Although Welfare and Institutions Code Section 11450.03 is not a tax statute, if it is struck down such action will directly implicate the state budget. Since California is required by the California Constitution to

balance its budget,[2] *Amici* submits that while the statute is not strictly a tax measure, it is nevertheless so necessarily intertwined with state revenue policy as to raise it to the level of broad deference articulated in *Williams* and *Lehnhausen, infra.*

C. COURTS ARE DIVIDED IN THEIR ANALYSIS USING THE RATIONAL BASIS TEST

In any event, District Courts have determined that even under rational basis analysis, tiered durational residency benefits are unconstitutional.

> "Although the Supreme Court has stated that encouraging employment is a legitimate government purpose, the Court has also expressly held that a one-year waiting period that is justified as a means of encouraging new residents to seek and obtain employment sooner "provides no rational basis for imposing a one-year waiting period restriction on new residents only." *Id.* at 637-38, 89 S.Ct. at 1333. Thus, under binding Supreme Court precedent, Section 9(5)(ii)'s one year waiting period simply cannot be justified by claiming that it encourages newcomers to work because it simply is not rationally related to this purpose."

Maldonado, 177 F.R.D. at 332. *See also Warrick v. Snider, supra.*

Yet such an application of equal protection analysis runs contrary to this Court's decision in *Nordlinger v. Hahn, supra,* in which a California property tax scheme

---

[2] California Constitution Article IV, § 12(a).

resulting in dramatic financial disparities between similarly situated individuals was upheld by the Court. In *Nordlinger,* this Court's review of the record found that:

> "New owners and old owners are treated differently with respect to one factor only – the basis on which their property is initially assessed. Petitioner's true complaint is that the State has denied her – a new owner – the benefit of the same assessment value that her neighbors – older owners – enjoy."

Nordlinger, 112 S.Ct. at 2333.

In *Nordlinger,* this Court restated the applicable law of rational basis analysis in equal protection claims: that the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification (112 S.Ct. at 2332); that disparities in benefits are constitutional for equal protection purposes where such policies serve to fulfill "the legitimate expectation and reliance interests" of those receiving the benefits (112 S.Ct. at 2333), citing to *Kadrmas v. Dickinson Public Schools,* 487 U.S. 450, 108 S.Ct. 2481, 101 L.Ed.2d 399 (1988) and *United States Railroad Retirement Bd. v. Fritz,* 449 U.S. 166, 101 S.Ct. 453, 66 L.Ed.2d 368 (1980); and that a legislature need not even articulate a purpose or rationale supporting the classification to pass constitutional muster under the Equal Protection Clause (112 S.Ct. at 2334).

Common sense dictates that a newcomer to California does not have a legitimate reliance and expectation interest to immediately receive welfare benefits at a level higher than received in the prior state of residence. Nevertheless, courts are divided on their rational basis analysis in such cases, and for that reason the Writ should be

granted to provide new, clear guidance to the lower courts.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's Writ of Certiorari.

Respectfully submitted,

JAMES V. LACY
LACY AND LACY
30100 Town Center Dr., #O-269
Laguna Niguel, CA 92677
(714) 248-1154

Counsel for Amici Curiae

Dated: July 31, 1998